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IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO AND OAKLAND DIVISION

THOMAS FERNANDEZ, LORA SMITH, and  
 TOSHA THOMAS, individually and on behalf  
 of a class of all other persons similarly situated,

Plaintiffs,

vs.

K-M INDUSTRIES HOLDING CO., INC.;  
 K-M INDUSTRIES HOLDING CO., INC.  
 ESOP PLAN COMMITTEE; WILLIAM E.  
 AND DESIREE B. MOORE REVOCABLE  
 TRUST; TRUSTEES OF THE WILLIAM E.  
 AND DESIREE B. MOORE REVOCABLE  
 TRUST; CIG ESOP PLAN COMMITTEE;  
 NORTH STAR TRUST COMPANY;  
 DESIREE B. MOORE REVOCABLE TRUST;  
 WILLIAM E. MOORE MARITAL TRUST;  
 WILLIAM E. MOORE GENERATION-  
 SKIPPING TRUST; and DESIREE MOORE,  
 BOTH IN HER INDIVIDUAL CAPACITY  
 AND AS TRUSTEE OF THE WILLIAM E.  
 AND DESIREE B. MOORE REVOCABLE  
 TRUST'S SUCCESSOR TRUSTS NAMED  
 ABOVE,

Defendants.

Case No. C-06-07339 CW

**SUPPLEMENTAL DECLARATION OF  
 NINA WASOW IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR CLASS  
 CERTIFICATION**

SUPPLEMENTAL DECLARATION OF NINA WASOW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS  
 CERTIFICATION

[Case No. C-06-07339 CW ]

1 I, Nina Wasow, declare as follows:

2 1. I am a member in good standing of the State Bar of California and an attorney  
3 with Lewis, Feinberg, Lee, Renaker & Jackson, P.C., which is counsel for Plaintiffs in this  
4 action. I have personal knowledge of the facts contained in this declaration and, if called to  
5 testify, will testify as set forth below.

6 2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the  
7 deposition of Thomas Fernandez taken April 21, 2008.

8 3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the  
9 deposition of Lora D. Smith taken April 16, 2008.

10 4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the  
11 deposition of Tosha Thomas taken April 18, 2008.

12 5. Attached hereto as Exhibit 4 is a true and correct copy of Plaintiffs' Initial  
13 Disclosures for Tosha Thomas, dated February 27, 2008.

14 I declare under penalty of perjury that the foregoing is true and correct. Executed on June  
15 19, 2008 at Oakland, California.

16 /s/

17 Nina Wasow  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO AND OAKLAND DIVISION

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THOMAS FERNANDEZ, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No.
vs.	)	
	)	C-06-07339 CW
K-M INDUSTRIES HOLDING CO., INC., et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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VIDEOTAPED DEPOSITION OF THOMAS FERNANDEZ  
April 21, 2008  
San Francisco, California

Reported by:  
EMI ALBRIGHT  
RPR, CSR No. 13042  
Job No. 79887

1           A     I have never met her nor have I ever spoken  
2 with her. I was shown a copy of a legal form with her  
3 name on it I believe last week in speaking with my  
4 attorneys.

5           Q     Apart from Tosha Thomas, do you know the  
6 name of any person who has ever worked for Kelly-Moore  
7 Paint?

8                     MS. HASSELMAN:     Objection. Vague.

9           A     No.

10          BY MR. LOVITT:

11          Q     What is your understanding of your  
12 responsibilities as a representative plaintiff in a  
13 class action lawsuit?

14          A     My understanding is that I am not to  
15 undertake any actions which would be detrimental to the  
16 interest of any of the other class members.

17          Q     Who do you understand those class members  
18 to be generically without referring to anybody's name?

19                     MS. HASSELMAN:     Objection. Vague and  
20 ambiguous. Calls for a legal conclusion.

21          A     All people who work for Kelly-Moore Paint  
22 and all people who work for Capital Insurance Group.

23          BY MR. LOVITT:

24          Q     What do you understand your financial  
25 responsibilities are with respect to this lawsuit?

1 the complaint in this case was not filed until a little  
2 over a year after you signed Exhibit 213?

3 MS. HASSELMAN: Objection. Calls for a  
4 legal conclusion. Calls for attorney work product.  
5 Calls for attorney client communications.

6 BY MR. LOVITT:

7 Q So what is your understanding of why it was  
8 over a year later that the lawsuit was actually filed?

9 MS. HASSELMAN: Same objections. Calls  
10 for speculation as well.

11 A I do not know why there was a time period  
12 lag between October 2005 and when the initial complaint  
13 was filed. I do not know why there was a time lag.

14 BY MR. LOVITT:

15 Q I would like to show the witness  
16 Exhibit 148. Before I ask you any questions about  
17 Exhibit 148, I would like to ask some questions about  
18 how you maintain your files related to your employment.

19 And the first question is do you make it a  
20 practice to retain copies of documents concerning your  
21 employment?

22 MS. HASSELMAN: Objection. Vague.

23 A Yes.

24 BY MR. LOVITT:

25 Q And can you tell us generally what that

1 practice is?

2 MS. HASSELMAN: Objection. Vague.

3 A I try to save what I feel are relevant  
4 documents.

5 BY MR. LOVITT:

6 Q And how do you go about this?

7 MS. HASSELMAN: Objection. Vague.

8 A Any documents that I feel are relevant, I  
9 store at home.

10 BY MR. LOVITT:

11 Q Now, do you store them in a particular  
12 folder, a particular file? How do you do that?

13 MS. HASSELMAN: Objection. Vague.

14 A File folders, boxes.

15 BY MR. LOVITT:

16 Q Now, when you left your employment at CIG,  
17 did you have a folder or a file where you kept documents  
18 that you wanted to retain concerning your employment at  
19 CIG?

20 A I did.

21 Q And did you also keep documents -- excuse  
22 me. Let me withdraw that.

23 Now, where did you keep this file or  
24 folder?

25 A At my place of residence.

1 Q Now, did you also have a place at your  
2 office where you kept documents concerning your  
3 employment?

4 A Are you defining office as a place other  
5 than my residence?

6 Q Yes.

7 A No.

8 Q By the way, I never really -- I don't have  
9 a clear understanding of your work situation. Did you  
10 have an office at CIG?

11 A I did not.

12 Q Did you have a desk at CIG?

13 A I did not.

14 Q So did you have a telephone extension that  
15 was dedicated to you at CIG?

16 A I did.

17 Q Did you have a cubicle or a chair or  
18 anyplace where when you were at the branch in -- was it  
19 Campbell -- when you were at the branch that you used  
20 when you were on the premises?

21 A Not that was specifically assigned to me.

22 Q So would it be fair to say that you did  
23 most of your paperwork kind of duties and task at home?

24 A Yes.

25 Q Now, where is that file or folder that you



1 used to keep your documents concerning your employment  
2 at CIG?

3 A At my place of residence.

4 Q Now, have you turned over that file or  
5 folder to your attorneys in this case?

6 A I have.

7 Q Have you retained anything from that file  
8 or folder that you did not turn over?

9 MS. HASSELMAN: Objection. Vague.

10 A I have not.

11 BY MR. LOVITT:

12 Q So it would be fair for us to conclude that  
13 all the papers that you have retained from your  
14 employment at CIG have been turned over to your lawyer?

15 A That is correct.

16 Q Now, periodically did you go through that  
17 file or folder containing these CIG employment documents  
18 and destroy certain of those documents or did you make  
19 it a practice to keep everything?

20 MS. HASSELMAN: Objection. Compound.

21 Vague.

22 A I generally do not keep all employment  
23 related documents.

24 BY MR. LOVITT:

25 Q So would there be occasions when you had

1 BY MR. LOVITT:

2 Q 216, this is another one of those printouts  
3 of e-mails. And this one was sent by island girl to  
4 you. You are beavis 666?

5 A That's right.

6 Q And it was sent apparently on October 16th  
7 2005. And this is just another one of those same  
8 documents like 215 and 214; correct?

9 A That's correct.

10 Q Now, during this time frame that you were  
11 getting these e-mails from Amy Roth, were you  
12 contemplating filing some suit for something wrong with  
13 the ESOP?

14 A Yes, I was.

15 Q And in your mind what did you think was  
16 wrong with the ESOP that would cause you to want to file  
17 suit?

18 A Well, the asbestos lawsuits against the  
19 parent company had a possibility of completely wiping  
20 out the value of our ESOP. And that was my main  
21 concern.

22 Q And did you hope to find some proof of that  
23 in these e-mails?

24 MS. HASSELMAN: Objection. Vague.

25 A Possibly.

1 A That's correct.

2 BY MR. LOVITT:

3 Q Now, when you received a certain  
4 entitlement to stock by virtue of your participation in  
5 the ESOP, did you think the stock would always go up?

6 MS. HASSELMAN: Objection. Calls for --  
7 excuse me. Objection. Misstates the terms of the plan.  
8 Misstates. Misleading. Vague and ambiguous.

9 A No, I did not.

10 BY MR. LOVITT:

11 Q Did you -- was it your understanding that  
12 it was possible that the stock would go down --

13 MS. HASSELMAN: Same objections.

14 BY MR. LOVITT:

15 Q -- in value?

16 A Yes, it was.

17 Q Now, you were concerned that because of the  
18 asbestos liability that your stock might go down; is  
19 that correct?

20 A No.

21 Q What was your concern relating to the  
22 asbestos liability of the Paint Company and the value of  
23 your stock?

24 MS. HASSELMAN: Objection. Vague. Vague  
25 as to time.

1           A     My concern was possible liquidation of the  
2     entire company and the value of my stock being reduced  
3     to zero.

4     BY MR. LOVITT:

5           Q     And did you think that was because somebody  
6     at your company, that is, CIG or at the Paint Company  
7     had done something wrong with respect to their dealings  
8     with the ESOP?

9           MS. HASSELMAN:   Objection.   Vague and  
10    ambiguous.

11          A     Yes.

12    BY MR. LOVITT:

13          Q     Can you tell me what was it that you  
14    thought that somebody at the company or at the Holding  
15    Company had done wrong that would expose your ESOP stock  
16    to the risk that you just stated?

17          MS. HASSELMAN:   Objection.   Vague and  
18    ambiguous.   Calls for a legal conclusion.

19          A     I had felt that the Moore family had taken  
20    out 42 percent of the value of the company, which was  
21    not subject to any of the losses created by the asbestos  
22    lawsuits, whereas if the company would have been  
23    completely liquidated, the Moores would still have had  
24    the 40 percent value of the company whereas everybody  
25    else who was vested in the ESOP company would have

1 nothing.

2 BY MR. LOVITT:

3 Q So you thought that at the time that the  
4 ESOP bought the stock that they paid too much for it?  
5 Is that what you are saying?

6 A No.

7 Q Do you think that the ESOP paid too much  
8 for the stock?

9 MS. HASSELMAN: Objection. Calls for a  
10 legal conclusion.

11 A I don't know.

12 BY MR. LOVITT:

13 Q Can you explain to me the basis for your  
14 thinking that the Moore family sold 42 percent of the  
15 company to the employees at a time when they were able  
16 to receive more money than they were entitled to?

17 A More money? I don't understand your  
18 question.

19 Q Well, then you can't --

20 MS. HASSELMAN: I think the problem might  
21 be with the word, they. It's not clear if you are  
22 referring to the Moore family or --

23 BY MR. LOVITT:

24 Q That the Moore family received more money  
25 than the Moore family was entitled to?

1 MS. HASSELMAN: Object to the form.

2 A I can't speak to the specific value of the  
3 amount of money is that they received, why I felt that  
4 they should have received that. My feeling was that  
5 that would have been -- would have been in their best  
6 interest facing the possible liquidation of the entire  
7 company, either losing all the value that they had in  
8 the value of the company or retaining 40 percent of it.  
9 A prudent person I would think would want to retain  
10 42 percent versus zero. So it seemed to me to be a  
11 logical thing to do on their part.

12 BY MR. LOVITT:

13 Q Do you know how the price that the Moore  
14 family was paid was determined?

15 A Not specifically, no.

16 Q What do you know about it?

17 MS. HASSELMAN: Objection. Vague and  
18 ambiguous.

19 A That it was determined by some process that  
20 I'm not completely familiar with.

21 BY MR. LOVITT:

22 Q Were you aware or are you aware now that  
23 the value that the Moore family received for the stock  
24 was determined by independent appraiser?

25 MS. HASSELMAN: Objection. Vague and

1 that it was acquired by the ESOP was to use a comparison  
2 with comparable public companies?

3 A I don't remember.

4 Q No. 2, track -- before we get to that, it  
5 says under response, among others there are two major  
6 factors used to appraise the value of the shares. And  
7 then No. 1 was that comparable public company analysis.  
8 No. 2, it says, tracking stock issues and overall  
9 performance of CIG.

10 Do you know what tracking stock issues  
11 refers to?

12 MS. HASSELMAN: Objection. Calls for  
13 speculation.

14 A I don't remember.

15 BY MR. LOVITT:

16 Q Now, at some point before you filed suit,  
17 were you aware of some issue with respect to tracking  
18 stock that caused you to think that the ESOP might have  
19 originally paid too much for the stock it purchased from  
20 the Moore family?

21 MS. HASSELMAN: Objection. Vague and  
22 ambiguous. Calls for a legal conclusion.

23 A No, I was not.

24 BY MR. LOVITT:

25 Q Are you currently aware of any issues

1 concerning tracking stock that might -- that might have  
2 caused the ESOP to pay the Moores too much money for the  
3 stock it purchased in 1999?

4 MS. HASSELMAN: Same objections.

5 A I am.

6 BY MR. LOVITT:

7 Q And is that based on information that you  
8 may have received from your lawyer? If so, I don't want  
9 to pry into it.

10 A That's correct.

11 Q Have you been made aware of any issue with  
12 respect to tracking stock as it relates to the purchase  
13 price of the stock purchased by the ESOP from the Moore  
14 family?

15 A I believe so.

16 MS. HASSELMAN: Objection. Asked and  
17 answered.

18 BY MR. LOVITT:

19 Q I beg your pardon?

20 A I believe so, yes.

21 Q And can you tell us what that is?

22 MS. HASSELMAN: Objection. Vague and  
23 ambiguous. Calls for a legal conclusion.

24 A Something I discussed with my attorneys.

25 BY MR. LOVITT:



1 and ambiguous.

2 A I don't know.

3 BY MR. LOVITT:

4 Q Isn't it true, sir, that the value of the  
5 CIG stock purchased for the ESOP was, in fact, at a  
6 price that reflected a discount for lack of  
7 marketability and tracking stock issues?

8 MS. HASSELMAN: Objection. Calls for a  
9 legal conclusion. Calls for expert testimony.

10 A I don't know.

11 BY MR. LOVITT:

12 Q As you sit here today, do you have any  
13 complaint about the price that the ESOP paid for  
14 tracking stock of the Paint Company?

15 MS. HASSELMAN: Objection. Calls for a  
16 legal conclusion. Calls for expert testimony.

17 A I do.

18 BY MR. LOVITT:

19 Q You do? What is --

20 MS. HASSELMAN: Let me finish my  
21 objection.

22 MR. LOVITT: Okay. He's already answered.

23 MS. HASSELMAN: Well, never -- my  
24 objections are still going to stand. Calls for a legal  
25 conclusion. Calls for expert testimony. And that will

1 A I would have, yes.

2 Q Can you explain to me the reasons that you  
3 filed this lawsuit?

4 A Well, I felt that the obligations of K-M  
5 Industries, I guess, the parent company, in regards to  
6 the outstanding amount of the asbestos lawsuits weren't  
7 really properly taken into effect when the ESOP was  
8 created -- or taken into account. Excuse me.

9 Q And what facts do you have to base that  
10 understanding on that the asbestos wasn't properly taken  
11 into account?

12 A Well, at one point we were told that the  
13 value of the ESOP could be zero. And then that's when I  
14 had first come to that conclusion.

15 Q Other than when you were told that at one  
16 point the value could be zero, do you have any other  
17 facts to support the allegations?

18 MS. HASSELMAN: Objection. Calls for a  
19 legal conclusion.

20 A Not that I remember.

21 BY MR. SULLIVAN:

22 Q Do you believe there are other facts that  
23 you don't recall?

24 MS. HASSELMAN: Objection. Calls for a  
25 legal conclusion.

1 were improper?

2 MS. HASSELMAN: Objection. Calls for a  
3 legal conclusion.

4 A No.

5 MS. HASSELMAN: Calls for expert  
6 testimony. I'm sorry, I realize that was belated, but I  
7 just want to get that in to the prior question as well.

8 BY MR. SULLIVAN:

9 Q Do you have Exhibit 147 in front of you?  
10 Have you seen this before?

11 A Yes.

12 Q Did you review this document before it was  
13 filed on January 18, 2008?

14 A No.

15 Q Did you have an opportunity to review the  
16 original complaint before it was filed?

17 A No.

18 Q Did you have any input into the contents of  
19 the original complaint?

20 MS. HASSELMAN: Objection. Calls for  
21 attorney client communications.

22 BY MR. SULLIVAN:

23 Q I am just looking for a yes or no answer.

24 MS. HASSELMAN: That calls for a legal  
25 conclusion as well.

1 A Yes.

2 BY MR. SULLIVAN:

3 Q And is there anything that you think should  
4 be in the complaint, the original complaint, that  
5 wasn't?

6 MS. HASSELMAN: Objection. Calls for a  
7 legal conclusion. You also have not shown him the  
8 original complaint and he hasn't had an opportunity to  
9 review that.

10 BY MR. SULLIVAN:

11 Q Is there anything that you think should be  
12 in the second amended complaint that is Exhibit 147 that  
13 is not?

14 MS. HASSELMAN: Same objections. It's a  
15 long document. If you want him to review it, he should  
16 have time to review that. Also calls for a legal  
17 conclusion.

18 A I would say I am not sure.

19 BY MR. SULLIVAN:

20 Q What losses do you claim that you have  
21 suffered as a result of the actions of the defendants  
22 that have been named in the complaint?

23 MS. HASSELMAN: Objection. Calls for a  
24 legal conclusion. Calls for expert testimony.

25 A I'm not sure of the exact losses.

# **EXHIBIT 2**

LORA D. SMITH

04/16/08

Page 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

THOMAS FERNANDEZ, et al.,

Plaintiffs,

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No. C 06-07339 CW

K-M INDUSTRIES HOLDING CO.,  
INC., et al.,

Defendants.

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VIDEOTAPED DEPOSITION OF LORA D. SMITH

San Francisco, California

Wednesday, April 16, 2008

VOLUME 1

Reported by:  
TRACY L. PERRY  
CSR No. 9577  
CHRIS TE SELLE  
CSR No. 10836

JOB No. 84325

09:45:01 1 What month did you -- did you terminate your  
2 employment at CIG in 2001?

09:45:14 3 A October.

09:45:19 4 Q Why did you -- why did you leave?

09:45:21 5 A I had a baby and decided to stay home and raise  
6 him myself.

09:45:26 7 Q Were you happy with your employment there? Were  
8 you -- did you feel that you were appreciated and treated  
9 well?

09:45:33 10 MS. HASSELMAN: Objection; vague and compound.

09:45:35 11 THE WITNESS: Yes, very much.

09:45:46 12 BY MR. LOVITT:

09:45:46 13 Q What caused you to have the idea that you should  
14 be a plaintiff in a lawsuit against the company --

09:45:54 15 MS. HASSELMAN: I'll just --

09:45:54 16 BY MR. LOVITT:

09:45:54 17 Q -- and others?

09:45:56 18 MS. HASSELMAN: Just to clear up the parameters  
19 around the question, answer -- if you can answer in your  
20 own words without getting into any communications with  
21 counsel, you can answer that, but just make sure that you  
22 don't discuss any communications with your lawyers.

09:46:18 23 THE WITNESS: Because I was told I would be paid for  
24 my shares on a certain date and wasn't.

09:46:23 25 BY MR. LOVITT:

10:11:32 1 BY MR. LOVITT:

10:11:32 2 Q Okay. No one other than a lawyer has ever told  
3 you that there is a problem regarding asbestos and the  
4 value of your ESOP shares, correct?

10:11:57 5 MS. HASSELMAN: Object to the form.

10:11:59 6 THE WITNESS: Yes.

10:12:03 7 MS. HASSELMAN: And it's -- the question is  
8 ambiguous. I'll add that objection to the question, as  
9 well.

10:12:23 10 BY MR. LOVITT:

10:12:23 11 Q Now, you understand you're a plaintiff in a  
12 class action lawsuit; is that correct?

10:12:26 13 A Yes.

10:12:27 14 Q And what do you consider your responsibilities  
15 to be as a plaintiff in a class action?

10:12:41 16 A To represent the employees.

10:12:44 17 Q Which employees?

10:12:47 18 A Employees that have -- that are participants in  
19 the ESOP program.

10:12:52 20 Q Now, do you mean employees at CIG?

10:13:00 21 MS. HASSELMAN: Objection; calls for a legal  
22 conclusion.

10:13:05 23 THE WITNESS: Employees or past employees like me.

10:13:09 24 BY MR. LOVITT:

10:13:09 25 Q Past employees of CIG.



10:14:31 1 A Yes.

10:14:44 2 Q Now, we were talking about your duties as a --  
3 as a plaintiff in a class action. You said to represent  
4 the interest of the -- of the employees and past  
5 employees; is that correct?

10:14:54 6 MS. HASSELMAN: Objection; misstates prior  
7 testimony.

10:15:00 8 THE WITNESS: That have interest in the plan.

10:15:02 9 BY MR. LOVITT:

10:15:02 10 Q That have interest in the plan. And -- and  
11 you're talking about CIG and -- CIG past and present  
12 employees?

10:15:14 13 MS. HASSELMAN: Objection; calls for a legal  
14 conclusion.

10:15:15 15 THE WITNESS: That have -- that are involved in the  
16 shares, the ESOP.

10:15:21 17 BY MR. LOVITT:

10:15:21 18 Q So -- okay. But the answer is yes, those people  
19 who are involved in the ESOP; is that right?

10:15:26 20 A Correct.

10:15:27 21 Q Okay. Now, as a plaintiff in a class action,  
22 could you tell me who is paying the cost of -- that  
23 you're incurring in bringing this lawsuit?

10:15:50 24 MS. HASSELMAN: Objection; assumes facts not in  
25 evidence.

10:16:04 1 THE WITNESS: That's between my attorney and me.

10:16:06 2 BY MR. LOVITT:

10:16:06 3 Q Are you paying the cost?

10:16:13 4 A No.

10:16:15 5 Q And do you -- who is paying the cost?

10:16:20 6 MS. HASSELMAN: I'll -- I'll caution the witness not

7 to reveal communications with counsel or the terms of

8 retainer agreements.

10:16:26 9 Ron, it's -- you're fine to ask if we're

10 advancing the cost or not, but I'm not going to let you

11 get into any details of the retainer --

10:16:34 12 MR. LOVITT: I don't want to.

10:16:34 13 MS. HASSELMAN: -- or the terms of the retainer

14 agreement.

10:16:36 15 BY MR. LOVITT:

10:16:36 16 Q Is it your understanding your attorney is

17 advancing the costs of the litigation?

10:16:44 18 A Yes.

10:16:49 19 Q Now, do you have any understanding as to what

20 the cost might be if you lose the lawsuit?

10:16:58 21 MS. HASSELMAN: I'll -- same objection; that this is

22 very close to attorney-client communication issues. So

23 if you have an understanding out of your own

24 understanding, then you can answer the question, but if

25 you have -- I would caution you not to get into any

1 communications with counsel.

10:17:12 2 THE WITNESS: I can't answer that.

10:17:25 3 BY MR. LOVITT:

10:17:25 4 Q You understand that if the lawsuit is lost on  
5 your side that the attorneys representing the defendants  
6 would -- might claim an entitlement to a reimbursement of  
7 their cost in defending the lawsuit. Are you aware of  
8 that?

10:17:43 9 MS. HASSELMAN: Objection; calls for speculation and  
10 calls for a legal conclusion.

10:17:49 11 THE WITNESS: I don't know.

10:17:51 12 BY MR. LOVITT:

10:17:51 13 Q You don't. Can you tell me whether you have an  
14 understanding as to -- whether you have an understanding  
15 as to your -- your responsibility to pay the entire cost  
16 of defending this lawsuit should you lose this lawsuit?

10:18:23 17 MS. HASSELMAN: Same objections. Calls for  
18 speculation, calls for a legal conclusion, and it assumes  
19 facts that aren't in evidence.

10:18:30 20 BY MR. LOVITT:

10:18:30 21 Q Do you have an awareness of that?

10:18:32 22 MS. HASSELMAN: Same objections.

10:18:40 23 THE WITNESS: I don't know.

10:18:41 24 BY MR. LOVITT:

10:18:41 25 Q Do you care?

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10:18:41 1 MS. HASSELMAN: Same objections and argumentative.

10:18:58 2 THE WITNESS: Can you repeat the question?

10:19:00 3 BY MR. LOVITT:

10:19:00 4 Q I withdraw the question.

10:19:12 5 Are you prepared to pay the cost of the lawsuit

6 to the opposing parties if, in fact, you lose the

7 lawsuit?

10:19:17 8 MS. HASSELMAN: Same objections. Calls for

9 speculation, calls for a legal conclusion, and assumes

10 facts that aren't in evidence.

10:19:28 11 THE WITNESS: Can you repeat the question?

10:19:29 12 MR. LOVITT: Tracy, read it back, please.

10:19:13 13 (□The record was read as follows:

10:19:13 14 "QUESTION: Are you prepared to pay the cost

15 of the lawsuit to the opposing parties if,

16 in fact, you lose the lawsuit?")

10:19:38 17 MS. HASSELMAN: Same objections.

10:19:45 18 THE WITNESS: No.

10:19:59 19 MS. HASSELMAN: Ron, do you think we could take a

20 short restroom break before we get to that, please.

10:20:04 21 MR. LOVITT: Sure. Sure.

10:20:05 22 THE VIDEOGRAPHER: The time is 10:20. We are going

23 off record.

10:20:09 24 (Recess taken: 10:20 until 10:42 a.m.)

10:20:13 25 (Deposition Exhibit 147 was marked.)

10:20:13 1 MR. LOVITT: Yes. Okay.

10:20:13 2 Q Ms. Smith, I've handed you -- at least I think  
3 the reporter has handed you the -- the package of papers  
4 that's marked Exhibit Number 147. Exhibit Number 147 is  
5 the second amended complaint, class action, corrected,  
6 and it's a 24-page document.

10:20:13 7 If you could just thumb through this, I have a  
8 couple of very general questions. Well, let me just ask,  
9 have you ever seen this document before?

10:20:13 10 A Yes.

10:20:13 11 Q Did you see it before it was filed?

10:20:13 12 A No.

10:20:13 13 Q When did you -- when did you first see it?

10:20:13 14 A April 15th of 2008.

10:20:13 15 Q Oh, that means like yesterday?

10:20:13 16 A Correct.

10:20:13 17 Q Okay. Do you know what this document is?

10:20:13 18 A Yes.

10:20:13 19 MS. HASSELMAN: Objection; vague.

10:20:13 20 BY MR. LOVITT:

10:20:13 21 Q I'd like you to turn to page 3 of the document  
22 and look at paragraph number 6 and read it to yourself,  
23 and I have just a couple of questions about it.

10:20:13 24 Is that -- is paragraph 6 correct to the best of  
25 your knowledge?

1 at line 12.

10:20:13 2 MS. HASSELMAN: Do you want her to read the entire  
3 paragraph or -- it's a long paragraph.

10:20:13 4 BY MR. LOVITT:

10:20:13 5 Q Yeah, why don't you read lines 12 through 15 --  
6 excuse me -- 12 through 17.

10:20:13 7 MS. HASSELMAN: Henry, do we have any additional  
8 copies of this for Kirsten and Aliah?

10:20:13 9 MR. LOVITT: No. You know, if you would have told  
10 me I would have had them, but I -- I didn't.

10:20:13 11 MS. HASSELMAN: Okay. I just figured it's worth  
12 asking.

10:20:13 13 BY MR. LOVITT:

10:20:13 14 Q Tell me when you've gotten through paragraph --  
15 lines 12 through 17.

10:20:13 16 A Okay.

10:20:13 17 Q Okay, you have, or okay, you'll tell me?

10:20:13 18 A Mm-hmm. No. Yes, I have.

10:20:13 19 Q Okay. Is the statement in this -- in these  
20 lines, is that correct to the best of your ability?

10:20:13 21 A Yes.

10:20:13 22 Q Okay. You mentioned that "Plaintiff Smith,"  
23 that -- that's you, "have no knowledge that the plan's  
24 purchase KMH stock" -- "purchases of KMH stock may have  
25 been for more than fair market value, including but not

1 limited to knowledge that more than fair market value may  
2 have been paid due to potential asbestos liability until  
3 she was informed by letter in February of 2005 that no  
4 valuation of the plan's stock had been completed for 2003  
5 due to issues related to potential asbestos liability."

10:20:13 6 Now, is that a true statement?

10:20:13 7 MS. HASSELMAN: Objection; compound.

10:20:13 8 BY MR. LOVITT:

10:20:13 9 Q Is that a true statement?

10:20:13 10 MS. HASSELMAN: Well, you just -- you're referring  
11 to a long sentence, that's all.

10:20:13 12 MR. LOVITT: Yeah.

10:20:13 13 Q Is everything in that sentence correct? I'll  
14 withdraw my previous question.

10:20:13 15 Is everything in that sentence correct?

10:20:13 16 A No.

10:20:13 17 Q Tell me the parts that are incorrect.

10:20:13 18 A Let's see. Parts that are incorrect, saying no  
19 knowledge until I was informed by the letter in February  
20 2005.

10:20:13 21 Q Mm-hmm. So -- so did you -- do you have a  
22 recollection of receiving some letter in 2005, in  
23 February of 2005?

10:20:13 24 A Yes.

10:20:13 25 Q And do you remember what the letter informed you

1 of?

10:20:13 2 A Yes.

10:20:13 3 Q What did it inform you of?

10:20:13 4 A Of asbestos litigation from Kelly -- against  
5 Kelly-Moore.

10:20:13 6 Q Okay. So why is that -- why is that phrase  
7 incorrect in your view?

10:20:13 8 A Because --

10:20:13 9 MS. HASSELMAN: I'm sorry. Do you mean the phrase  
10 in the complaint?

10:20:13 11 MR. LOVITT: The phrase -- yeah, I'm asking her if  
12 everything in this paragraph, this sentence that we're  
13 reading is correct, and she said no. And then she said  
14 the part about until she was informed by letter of  
15 2000 -- February of 2005.

10:20:13 16 Q What's incorrect about that?

10:20:13 17 A I wasn't under the understanding that  
18 Kelly-Moore Paint's stock had anything to do with the  
19 insurance company's stock. My understanding was that  
20 they had theirs and we had ours.

10:20:13 21 Q Mm-hmm.

10:20:13 22 A So, to me, when I read the letter I thought,  
23 well, that's their -- that's affecting their shares, not  
24 ours.

10:20:13 25 Q Okay. Is there anything else in this sentence



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1 that's incorrect?

10:20:13 2 A No.

10:20:13 3 Q So your earlier testimony I believe, and tell me  
4 if I'm incorrect in this, you said you didn't -- you were  
5 never made aware of any relationship between asbestos  
6 litigation and the value of your ESOP shares until you  
7 met with a lawyer; is that correct?

10:20:13 8 MS. HASSELMAN: Objection; misstates prior  
9 testimony.

10:20:13 10 You can answer.

10:20:13 11 THE WITNESS: Correct.

10:20:13 12 BY MR. LOVITT:

10:20:13 13 Q Okay. Is -- is there anything else in that  
14 sentence that's incorrect on page 13, lines 12 through  
15 17?

10:20:13 16 A No.

10:20:13 17 MS. HASSELMAN: Did you --

10:20:13 18 BY MR. LOVITT:

10:20:13 19 Q So let me ask you this. Did you -- have you  
20 ever learned up until this very minute that the shares of  
21 your ESOP were priced at more than fair market value at  
22 the time that they were bought by the ESOP?

10:20:13 23 MS. HASSELMAN: Objection; vague and --

10:20:13 24 THE WITNESS: Can you rephrase the question?

10:20:13 25 BY MR. LOVITT:

10:20:13 1 Q You've named Mr. Moore's estate and trust as a  
2 defendant in this lawsuit. What did -- what did  
3 Mr. Moore do wrong?

10:20:13 4 MS. HASSELMAN: Objection; calls for a legal  
5 conclusion, it's argumentative.

10:20:13 6 BY MR. LOVITT:

10:20:13 7 Q What, if anything, to your knowledge Mr. Moore  
8 did wrong?

10:20:13 9 MS. HASSELMAN: Same objections.

10:20:13 10 THE WITNESS: He borrowed money from the insurance  
11 company to purchase the stock for the paint company.

10:20:13 12 BY MR. LOVITT:

10:20:13 13 Q Did he do anything else?

10:20:13 14 MS. HASSELMAN: Same objections. Calls for a legal  
15 conclusion, calls for speculation.

10:20:13 16 THE WITNESS: He didn't get outside evaluators or --  
17 to evaluate the company's stock value.

10:20:13 18 BY MR. LOVITT:

10:20:13 19 Q When did he do that?

10:20:13 20 MS. HASSELMAN: Objection; I'm going to object to  
21 the form.

10:20:13 22 BY MR. LOVITT:

10:20:13 23 Q Do you -- you don't -- when did he do that?

10:20:13 24 A I don't know.

10:20:13 25 MS. HASSELMAN: Same objections.

10:20:13 1 Q Is the reason that you can't answer it is that  
2 everything that you -- all the information you need to  
3 answer the question has come from your attorney?

10:20:13 4 MS. HASSELMAN: Same objections.

10:20:13 5 THE WITNESS: I can't answer that.

10:20:13 6 BY MR. LOVITT:

10:20:13 7 Q Well, you're in a deposition and if you have any  
8 information, you have to say yes or no or some answer.

10:20:13 9 MS. HASSELMAN: Objection. Ron, if there's a  
10 problem -- it may be that there's a problem with the  
11 question. It may be that there's an attorney-client  
12 problem here. You can ask her other questions to try to  
13 clarify why she can't answer the question that you've  
14 asked her, but you can't force her to answer a question  
15 she doesn't understand.

10:20:13 16 BY MR. LOVITT:

10:20:13 17 Q Why can't you answer the question?

10:20:13 18 A Because there's more than just information I've  
19 received from my attorney that have led me to believe  
20 that there was something wrong.

10:20:13 21 Q And would you -- what is it that led you to  
22 believe -- apart from anything your attorneys told you,  
23 what is it in your life experience that has led you to  
24 believe that there was something wrong with the way the  
25 ESOP treated you?

10:20:13 1 MS. HASSELMAN: Objection to the characterization,  
2 but --

10:20:13 3 THE WITNESS: Because I was told on several  
4 occasions that I would be paid for my shares in the  
5 beginning of 2007. Then when that time came around, the  
6 story changed to no, you wouldn't be paid until 2014.  
7 There -- it wasn't right to me. Something was wrong.

10:20:13 8 BY MR. LOVITT:

10:20:13 9 Q Anything else that you -- that you felt was  
10 wrong with the way your participation in the ESOP was  
11 being handled?

10:20:13 12 A Besides that?

10:20:13 13 Q Yeah.

10:20:13 14 A No.

10:20:13 15 MR. LOVITT: Okay. Let's mark this one -- this one  
16 as 148.

10:20:13 17 (Deposition Exhibit 148 was marked.)

10:20:13 18 THE VIDEOGRAPHER: Okay. The time is 11:27. We're  
19 going off record.

10:20:13 20 //

10:20:13 21 //

10:20:13 22 //

23 //

24 //

25 //

13:37:31 1 Q. Okay.

13:37:32 2 And could you describe for us your  
13:37:36 3 procedures in filing and storing documents that you  
13:37:44 4 receive from CIG pertaining to your ESOP.

13:37:48 5 A. I had a clear Velcro on both sides shut  
13:37:53 6 folder that I put the information in, and then they  
13:37:57 7 went into a, like a leather attache case that I had  
13:38:03 8 all my other healthcare and important documents,  
13:38:06 9 paperwork, Social Security, things, stuff like that,  
13:38:10 10 into.

13:38:10 11 Q. So were the CIG documents kept along with  
13:38:14 12 other documents, or were they segregated in their  
13:38:18 13 own classification?

13:38:20 14 A. They were --

13:38:21 15 MS. HASSELMAN: Objection. Compound.

13:38:23 16 THE WITNESS: They were separated.

13:38:26 17 BY MR. LOVITT:

13:38:26 18 Q. Now, have you turned all those documents  
13:38:29 19 over to your attorney?

13:38:30 20 A. Yes.

13:38:32 21 Q. And did you try, as best you could, to  
13:38:38 22 make sure that all the mail that you received  
13:38:41 23 concerning your ESOP at CIG was saved in that file?

13:38:47 24 A. Yes.

13:38:47 25 MS. HASSELMAN: Objection. Vague and

13:42:42 1 A. Yes.

13:42:44 2 Q. And right in the middle of the letter,  
13:42:49 3 that middle paragraph, it says, Mr. Moore,  
13:42:51 4 Mr. William E. Moore sold shares to us to create a  
13:42:55 5 market for the stock he owns, without a sale to  
13:42:58 6 outside interests, and to recognize the loyalty,  
13:43:01 7 dedication and hard work of CIG team members.

13:43:06 8 Does that refresh your recollection as to  
13:43:10 9 who sold the stock to the ESOP?

13:43:12 10 A. Yes.

13:43:12 11 Q. So it was in fact Mr. Moore?

13:43:14 12 A. Yes.

13:43:16 13 Q. Now, did you have any reason to believe at  
13:43:18 14 this time that ESOP didn't get a fair deal, that the  
13:43:22 15 ESOP -- strike that question.

13:43:24 16 Did you have any reason to believe that  
13:43:25 17 the ESOP paid too much for the stock?

13:43:28 18 MS. HASSELMAN: Vague as to time.

13:43:29 19 BY MR. LOVITT:

13:43:30 20 Q. During this time period.

13:43:31 21 A. At this time when I received this letter?

13:43:32 22 Q. Yeah.

13:43:33 23 A. No.

13:43:33 24 Q. Did you ever come to the opinion that the  
13:43:36 25 ESOP paid too much for its 42 percent?

13:43:41 1 A. Yes.

13:43:41 2 Q. When did you reach that opinion?

13:43:45 3 A. In 2006.

13:43:49 4 Q. In 2006.

13:43:52 5 What caused you to think in 2006 that the

13:43:55 6 ESOP might have paid too much for the stock?

13:43:59 7 MS. HASSELMAN: Objection. This is, first of

13:44:00 8 all, this is ground we've already been over. But,

13:44:03 9 second of all, I just want to caution the witness

13:44:05 10 that you can answer to the extent that your answer

13:44:09 11 comes from your own knowledge and not communications

13:44:11 12 with counsel, but don't get into any communications

13:44:13 13 with counsel.

13:44:17 14 THE WITNESS: It came to my knowledge in 2006.

13:44:20 15 BY MR. LOVITT:

13:44:21 16 Q. How so?

13:44:22 17 A. I can't answer.

13:44:22 18 MS. HASSELMAN: Same objection.

13:44:23 19 BY MR. LOVITT:

13:44:23 20 Q. You can't answer in 2006?

13:44:27 21 MS. HASSELMAN: Ron, I think I can clarify

13:44:29 22 here, but --

13:44:30 23 MR. LOVITT: Go ahead.

13:44:31 24 MS. HASSELMAN: This is, in conjunction with

13:44:32 25 the correction about when the conversation with

17:45:25 1 THE VIDEOGRAPHER: The time is 5:45. We are  
17:45:27 2 going off the record.

17:45:31 3 (Recess: 5:45 p.m. to 5:52 p.m.)

17:52:46 4 THE VIDEOGRAPHER: The time is 5:52. We are  
17:52:48 5 back on record.

17:52:51 6 MR. SULLIVAN: After a brief conference among  
17:52:54 7 counsel, we have agreed to withdraw Exhibit 181.

17:52:58 8 MS. HASSELMAN: So we are going to take the  
17:53:00 9 sticker off the document, and the exhibit number  
17:53:02 10 will be available for the next exhibit.

17:53:05 11 MR. SULLIVAN: Correct.

17:53:05 12 (Exhibit 181 unmarked.)

17:53:05 13 MS. HASSELMAN: I just have a couple of quick  
17:53:05 14 questions to clarify some earlier testimony. Ms.  
17:53:05 15 Smith will be done soon.

17:53:05 16

17:53:05 17 EXAMINATION

17:53:08 18 BY MS. HASSELMAN:

17:53:08 19 Q. Ms. Smith, just a couple of quick  
17:54:06 20 questions.

17:54:11 21 Do you understand that if you become a  
17:54:12 22 class representative, that you represent the  
17:54:15 23 participants in the K-M Industries Holding Company  
17:54:20 24 ESOP?

17:54:21 25 A. Yes.



# **EXHIBIT 3**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO AND OAKLAND DIVISION

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THOMAS FERNANDEZ, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No.
vs.	)	
	)	C-06-07339 CW
K-M INDUSTRIES HOLDING CO., INC., et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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VIDEOTAPED DEPOSITION OF TOSHA THOMAS  
April 18, 2008  
San Francisco, California

Reported by:  
EMI ALBRIGHT  
RPR, CSR No. 13042  
Job No. 79885

1 Mr. Cristiano?

2 MS. HASSELMAN: Objection. Vague and  
3 ambiguous.

4 A Sorry. Can you repeat it, please?

09:54 5 BY MR. HANNAN:

6 Q Sure. Did you have any business dealings  
7 with Mr. Cristiano?

8 A No.

9 Q May we show the witness Exhibit 60, please?

09:55 10 Ms. Thomas, can you tell us what Exhibit 60 is?

11 MS. HASSELMAN: Objection. Vague.

12 A Is your question for me to explain what  
13 this document is? Or --

14 BY MR. HANNAN:

09:56 15 Q Yes.

16 MS. HASSELMAN: Objection. Vague and  
17 calls for speculation.

18 A Again it's a document pertaining to the  
19 ESOP plan.

09:56 20 BY MR. HANNAN:

21 Q And have you seen this document before?

22 A No, I have not.

23 Q Would you turn back to Exhibit 59, please.

24 I will ask you the same question. Can you tell us what  
09:56 25 this is?

1 is that?

2 A That was my relative of mine, that was her  
3 employer at the time.

4 Q I see. And how did you come to prepare  
10:10 5 these two pages of Exhibit 184?

6 MS. HASSELMAN: Objection. Vague.

7 A Sorry. Can you repeat it, please?

8 BY MR. HANNAN:

9 Q How is it that you went through the process  
10:10 10 of preparing these two pages, Exhibit 184?

11 A I just created the resume myself.

12 Q And had you seen some posting that  
13 indicated a position might be available with  
14 Kelly-Moore?

10:11 15 A Yes, it was in a newspaper at the time.

16 Q Now, you were employed with Kelly-Moore  
17 until I believe July 2 of '07; is that correct?

18 A Yes.

19 Q And what happened that caused you to leave  
10:11 20 Kelly-Moore?

21 A At the time when I left, I was -- I felt I  
22 was or I received discriminatory actions against myself  
23 and I worked in a hostile environment so I left the  
24 company.

10:11 25 Q All right. And what individual or

1 A Yes.

2 Q And would you remind us with whom that  
3 conversation was?

4 A Steve DeVoe.

10:46 5 Q All right. And I believe you said that you  
6 explained to Mr. DeVoe your view of what had happened  
7 and how the harassment had not ceased. What is it that  
8 Dr. DeVoe said to you?

9 A Well, at the time he just basically, I  
10:46 10 wouldn't say offer his apologies. That would be  
11 acknowledging the situation, I think. Just basically  
12 left it up to me if I wanted to come back or not. That  
13 was basically the end result of it. I don't know if  
14 this would be going backwards, but there's a couple  
10:47 15 other things that I did want to mention being that we  
16 are talking about it. Harassment or discrimination,  
17 that wasn't the only reason. There were racial comments  
18 that were brought to my attention as well from upper  
19 management. And that was one of the other reasons.

10:47 20 Q Have you told us everything that Mr. DeVoe  
21 said to you in that telephone conversation?

22 A Yes.

23 Q And did you have any further conversation  
24 with anyone from Kelly-Moore about the subject matter of  
10:47 25 your conversations with Mr. DeVoe?

1 MS. HASSELMAN: Yes or no would be an  
2 acceptable answer.

3 BY MR. HANNAN:

4 Q Would you give us a yes or no? Do you  
10:59 5 recall the question?

6 A Can you repeat the question again, please?

7 Q Sure. Did Mr. Rukin undertake to represent  
8 you with respect to the subject matter of harassment at  
9 Kelly-Moore? Yes or no?

10:59 10 A No, not at this time, no.

11 Q Did he at any time undertake to represent  
12 you with regard to that subject?

13 A No.

14 Q Have you taken any action, any legal action  
11:00 15 of any sort with respect to that subject matter?

16 A Yes.

17 Q And what action have you taken?

18 A I contacted the EEOC.

19 Q And when did you do that?

11:00 20 A I believe it was maybe September of '07.

21 Q All right. And as a result of contacting  
22 them, did you take any further action?

23 MS. HASSELMAN: Objection. Vague and  
24 ambiguous.

11:00 25 A I'm sorry. As of -- can you repeat it,

1 please?

2 BY MR. HANNAN:

3 Q Sure. Did you do anything as a result of  
4 having contacted the EEOC?

11:00 5 MS. HASSELMAN: Same objection.

6 A I provided whatever information, but --

7 BY MR. HANNAN:

8 Q Did you file a complaint?

9 A Yes.

11:00 10 Q All right. And when did you file the  
11 complaint?

12 A I don't have an exact date, but I would say  
13 maybe September of '07.

14 Q All right. And what is the status of that  
11:01 15 complaint?

16 MS. HASSELMAN: Objection. Vague.

17 A Well, it's still in process.

18 BY MR. HANNAN:

19 Q And have you had any discussion with anyone  
11:01 20 about the subject matter of that complaint?

21 A I'm sorry. Discussion meaning?

22 Q With anyone about the subject matter of  
23 your EEOC complaint?

24 A No, just the EEOC themselves.

11:01 25 Q And with whom did you have that discussion

1 MR. HANNAN: Now, I want to put the  
2 complaint in front of the witness. It's Exhibit 147.  
3 Do we have a copy for the witness, in this book?

4 MS. HASSELMAN: I think it's here.

11:08 5 BY MR. HANNAN:

6 Q Ms. Thomas, I have asked you to look on  
7 Exhibit 147, and you can take as long as you wish. I  
8 want to ask you whether you recognize Exhibit 147?

9 A Yes.

11:08 10 Q When did you first see Exhibit 147 in any  
11 form?

12 A I believe the end of October 2007.

13 Q And when you first saw it, did you read it?

14 A Yes.

11:09 15 Q And did you attempt to understand it?

16 A Yes.

17 Q Did you understand that this document in  
18 whatever form it was in October of '07 would ultimately  
19 constitute a legal claim filed by you against the  
11:09 20 defendants including the Kelly-Moore defendants?

21 MS. HASSELMAN: Objection. Vague and  
22 ambiguous.

23 A Yes.

24 BY MR. HANNAN:

11:09 25 Q And did you make any edits to the document



1 Q Yes. As you sit here right now, do you  
2 have any problem with the way the shares in Kelly-Moore  
3 were valued?

4 MS. HASSELMAN: Objection. Same  
11:14 5 objections.

6 A Yes.

7 BY MR. HANNAN:

8 Q What is your problem?

9 MS. HASSELMAN: Objection. Vague.

11:14 10 A That there was too much paid into the plan.  
11 BY MR. HANNAN:

12 Q I see. And what amount was paid that was  
13 too much?

14 MS. HASSELMAN: Objection. Vague and  
11:14 15 ambiguous and calls for a legal conclusion.

16 A I don't know.

17 BY MR. HANNAN:

18 Q Well, how much too much was it?

19 MS. HASSELMAN: Objection. Calls for a  
11:14 20 legal conclusion. You are asking her to testify about  
21 damages. It's an issue for experts.

22 A I don't know. Can't answer that question.

23 BY MR. HANNAN:

24 Q Do you have any idea at all how much too  
11:15 25 much you believe was paid?

1 MS. HASSELMAN: Objection. Asked and  
2 answered.

3 A No.

4 BY MR. HANNAN:

11:15 5 Q Now, you also -- in this paragraph the  
6 complaint also says that money was borrowed from  
7 Kelly-Moore, 232 million. Do you have some problem with  
8 that?

9 MS. HASSELMAN: Objection. Misstates what  
11:15 10 the document says. Vague and ambiguous. Argumentative.

11 A You are asking me if I had any problem with  
12 it?

13 BY MR. HANNAN:

14 Q Yeah, is that a problem for you?

11:15 15 MS. HASSELMAN: Same objections.

16 A I don't know.

17 BY MR. HANNAN:

18 Q And then it also says here that Kelly-Moore  
19 in turn borrowed 136 million from CIG. What is CIG?

11:16 20 A California Insurance Group, I believe.

21 Q All right. And do you have a problem of  
22 any sort with Kelly-Moore allegedly borrowing  
23 136 million from CIG?

24 MS. HASSELMAN: Same objections. Vague  
11:16 25 and ambiguous. Calls for a legal conclusion.

1 Argumentative.

2 A I don't know.

3 BY MR. HANNAN:

4 Q All right. Would you look at paragraph 28.

11:17 5 A Okay.

6 Q And in part, paragraph 28 says that the  
7 defendant fiduciaries. Who are they?

8 MS. HASSELMAN: Objection. Calls for a  
9 legal conclusion. Are you asking her or potentially ask  
11:17 10 her to characterize a part of the document that you  
11 haven't shown to her?

12 BY MR. HANNAN:

13 Q Who did you think they were when you read  
14 this in or about October of '07?

11:17 15 MS. HASSELMAN: Objection. Misstates  
16 prior testimony. Assumes facts not in evidence.

17 A I don't know. I have no idea.

18 BY MR. HANNAN:

19 Q Then it says whoever these fiduciaries  
11:17 20 were, that they failed to investigate adequately the  
21 qualifications of any valuation expert. Is that true?

22 A Is this line -- paragraph 28?

23 Q Yes, where it says -- the particular  
24 portion that says that the fiduciaries failed to  
11:18 25 investigate adequately the qualifications of any

1 A Could have been after July.

2 BY MR. HANNAN:

3 Q What is your best recollection of when you  
4 first viewed this document?

14:04 5 MS. HASSELMAN: Objection. Misstates  
6 prior testimony.

7 A Maybe August sometime.

8 BY MR. HANNAN:

9 Q Now, you already testified that you had a  
14:05 10 conversation in 2003 in which you learned some pertinent  
11 information.

12 MS. HASSELMAN: Objection. Vague.

13 BY MR. HANNAN:

14 Q Well, let's get it exactly straight. Do  
14:05 15 you know what conversation I am referring to?

16 A With Pat --

17 MS. HASSELMAN: Objection. Calls for  
18 speculation.

19 BY MR. HANNAN:

14:05 20 Q Yes, with Pat McDonald?

21 A Yes.

22 Q All right. Where did that conversation  
23 take place?

24 A In the HR department.

14:05 25 Q All right. And who was present?

1 A I don't remember everyone exactly. I  
2 believe it was Linda, Lizzy -- Lizzy Fernandez, Linda  
3 Hazelton.

4 Q Anyone else?

14:05 5 A No, not that I remember, no.

6 Q Linda Hazelton, you said?

7 A Yes.

8 Q What was her employment position?

9 A She was an HR clerk there at the time.

14:06 10 Q And who initiated the conversation?

11 A Pat McDonald.

12 Q So the conversation involved Mr. McDonald,  
13 Ms. Hazelton, Ms. Fernandez, and yourself?

14 A Yes.

14:06 15 Q And how did it come to pass that  
16 Mr. McDonald initiated this conversation?

17 MS. HASSELMAN: Objection. Calls for  
18 speculation.

19 A Well, from what I remember at the time we  
14:06 20 had received numerous amounts of asbestos claims or  
21 lawsuits.

22 BY MR. HANNAN:

23 Q When you say we, to whom do you refer?

24 A Well, not we. Kelly-Moore.

14:06 25 Q Kelly-Moore had?

1 A Yes.

2 Q And how did you know that?

3 A He -- well, he brought them in and kind of  
4 mentioned it to the group.

14:07 5 Q Would you tell us as best you recall what  
6 it is that Mr. McDonald said on that occasion?

7 A Basically that I can remember is that the  
8 asbestos lawsuits could affect the ESOP. We really  
9 didn't get into too much of a discussion about it.

14:07 10 Q Anything else that he said?

11 A No.

12 Q What, if anything, did Linda Hazelton say?

13 A I don't remember exactly what she said.

14 Q What, if anything, did Lizzy Fernandez say?

14:07 15 A I don't remember.

16 Q And what, if anything, did you say?

17 A I just listened to what he said. I didn't  
18 make any comment about it.

19 Q So this was simply a matter that  
14:08 20 Mr. McDonald came in with this stack of papers and said  
21 to you that in sum and substance that asbestos lawsuits  
22 could affect the ESOP?

23 A Yes.

24 Q And nobody said anything in response to  
14:08 25 that?

1 the ESOP's purchase of KMH stock may have been for more  
2 than fair market value?

3 MS. HASSELMAN: Objection. Asked and  
4 answered. Calls for a legal conclusion.

14:22 5 A Can you please repeat the question, please?  
6 BY MR. HANNAN:

7 Q All right. When did you first learn that  
8 the ESOP's purchase of Kelly-Moore stock may have been  
9 for more than fair market value?

14:22 10 MS. HASSELMAN: Objection. Asked and  
11 answered. Calls for a legal conclusion.

12 A I don't recall. I don't remember.  
13 BY MR. HANNAN:

14 Q Let me read to you a portion of  
14:22 15 paragraph 53 of the complaint. And I am reading from  
16 line 17. Plaintiff Thomas was unaware that Kelly-Moore  
17 was liable to numerous plaintiffs for asbestos  
18 litigation until in or about 2005.

19 And I will skip now to the portion that  
14:23 20 pertains to the question. And let me read it so that it  
21 is limited and eliminates that portion.

22 Plaintiff Thomas had no knowledge that the  
23 plan's purchase of KMH stock may have been for more than  
24 fair market value, including but not limited to  
14:23 25 knowledge that more than fair market value may have been

1 paid due to potential asbestos liability, until 2007.

2 Do you see where I just read?

3 A Yes.

4 Q Is that a true statement?

14:23 5 MS. HASSELMAN: Objection. Calls for a  
6 legal conclusion. Asked and answered.

7 A Yes.

8 BY MR. HANNAN:

9 Q All right. And what is it that occurred in  
14:24 10 2007 that caused you for the first time to realize those  
11 alleged facts?

12 MS. HASSELMAN: Objection. We have been  
13 over this area. This calls for attorney client  
14 communications. If you can answer the question without  
14:24 15 getting into any communications from your counsel or to  
16 your counsel, you can answer. And if you need to get  
17 into attorney client communications to answer the  
18 question, then you shouldn't answer it.

19 A I can't answer the question.

14:24 20 BY MR. HANNAN:

21 Q Well, let's parse it a bit then. You were  
22 aware well prior to 2007 that the value of your ESOP  
23 shares may have been affected by potential asbestos  
24 liability; true?

14:24 25 MS. HASSELMAN: Object to the form of the



1 valuation of your ESOP shares?

2 MS. HASSELMAN: Objection. Calls for a  
3 legal conclusion. Vague and ambiguous and assumes facts  
4 not in evidence.

15:17 5 A Yes.

6 BY MR. HANNAN:

7 Q I'm sorry?

8 A Yes.

9 Q Thank you. Did you also learn in 2005 in  
15:17 10 August that an independent trustee had been appointed?

11 MS. HASSELMAN: Objection. Vague and  
12 ambiguous.

13 BY MR. HANNAN:

14 Q I'm sorry. I did say 2005. Let me  
15:17 15 withdraw the question.

16 Did you learn in or about August of 2006  
17 that an independent trustee had been appointed as  
18 trustee for the ESOP?

19 A Not that I recall, no.

15:17 20 Q Do you see that set forth under the title,  
21 trustee, on the second page?

22 A Yes, I see it.

23 Q All right. Now, you are suing North Star,  
24 aren't you?

15:18 25 MS. HASSELMAN: Objection. Calls for a

1 legal conclusion.

2 A Yes.

3 BY MR. HANNAN:

4 Q Why are you suing North Star?

15:18

5 MS. HASSELMAN: Objection. Calls for a  
6 legal conclusion. And if you are able to answer the  
7 question from your own knowledge without getting into  
8 any communications to or from counsel, then you can  
9 answer. And if you need to get into attorney client  
10 communications to answer the question, then you  
11 shouldn't answer.

12 A Can't answer that question.

13 BY MR. HANNAN:

14 Q Do you have any understanding as you sit  
15 here now why you are suing North Star?

15:18

16 MS. HASSELMAN: Same objection and the  
17 same caution to only answer if you can answer without  
18 getting into any attorney client communications.

19 BY MR. HANNAN:

15:18

20 Q It's a different question. It could be  
21 answered yes or no. As you sit here right now, do you  
22 have any idea regardless of where you obtained the idea  
23 why you are suing North Star?

24 MS. HASSELMAN: Same objections.

15:19

25 A Yes, somewhat, yes.

1 BY MR. HANNAN:

2 Q You have some idea why you are suing them?

3 A Yes.

4 Q Apart from anything your lawyer has said to  
15:19 5 you, can you give me any reason why you are suing North  
6 Star?

7 A Well, to retain back money from what was  
8 paid into the plan.

9 MR. HANNAN: I'm sorry. Could I have that  
15:19 10 back?

11 (Record read by the reporter.)

12

13 BY MR. HANNAN:

14 Q All right. And apart from what your  
15:19 15 lawyers may have told you, why do you think North Star  
16 owes you money for that reason?

17 MS. HASSELMAN: Same objection. Also  
18 mischaracterizes prior testimony and assumes facts not  
19 in evidence.

15:20 20 A I don't know.

21 BY MR. HANNAN:

22 Q Why are you suing Kelly-Moore, K-M  
23 Industries Holding Company?

24 MS. HASSELMAN: Same objections as to the  
15:20 25 last line of questions regarding North Star. If you can

1 answer from your own knowledge, that's fine. And if you  
2 need to get into attorney client communications in order  
3 to answer, then you should not answer the question.

4 A Can't answer the question.

15:20 5 BY MR. HANNAN:

6 Q Apart from whatever your lawyers may have  
7 told you, are you aware of any reason at all why you are  
8 suing K-M Industries Holding Company Inc.?

9 MS. HASSELMAN: Same objections and also  
15:20 10 argumentative.

11 A Yes.

12 BY MR. HANNAN:

13 Q I'm sorry?

14 A Yes.

15:20 15 Q What are those reasons?

16 A For the reason that I stated before, that  
17 the plan paid too much.

18 Q Okay. Any other reason?

19 A No.

15:21 20 Q And why are you suing the William E. and  
21 Desiree B. Moore revocable trust?

22 MS. HASSELMAN: Same objections. If you  
23 can answer from your own knowledge, then go ahead. And  
24 if you need to get into attorney client communications  
15:21 25 to do so, then don't answer.

1 A Can't answer it.

2 BY MR. HANNAN:

3 Q And apart from what your attorneys have  
4 told you, do you have any understanding or reason  
15:21 5 whatsoever for suing that revocable trust?

6 MS. HASSELMAN: Same objections.  
7 Argumentative.

8 A Somewhat, yes.

9 BY MR. HANNAN:

15:21 10 Q And tell us what the reason or reasons may  
11 be.

12 A It would be the same reason.

13 MR. HANNAN: All right. Mark as  
14 Exhibit 206 what appears to be a copy of a Mind Our Own  
15:22 15 Business newsletter dated July 2007, production Nos. P  
16 1113 through 16.

17 (Exhibit No. 206 marked  
18 for identification.)

19

20 BY MR. HANNAN:

21 Q Can you identify Exhibit 206 for us,  
22 please?

23 MS. HASSELMAN: Objection. Calls for  
24 speculation.

15:23 25 A It is a Mind Our Own Business document.

1 A Yeah.

2 Q Okay. Now, what is a class representative?

3 A Me representing a group as a whole.

4 Q And do you want to be a class

15:54 5 representative?

6 A Yes.

7 Q And what class do you want to represent?

8 A I just want to represent the class

9 basically for any payback or entitlement from the ESOP

15:55 10 plan.

11 Q Anybody at all who might be entitled to  
12 some, as you put it, payback from the ESOP plan?

13 A Yes.

14 Q Does that include former employees?

15:55 15 MS. HASSELMAN: Objection. Calls for a  
16 legal conclusion and lacks foundation.

17 A I would say so, yes.

18 BY MR. HANNAN:

19 Q And does it include present employees?

15:55 20 MS. HASSELMAN: Same objection.

21 A Yes.

22 BY MR. HANNAN:

23 Q And you are no longer a present employee,  
24 though; correct?

15:55 25 A Correct.

1 Q But you believe you can represent the  
2 present employees?

3 MS. HASSELMAN: Objection. Calls for a  
4 legal conclusion.

15:56 5 A Yes.

6 BY MR. HANNAN:

7 Q What are your duties as a class  
8 representative?

9 A My duties? I believe to basically maybe  
15:56 10 step in and do whatever I can to receive anything that  
11 was entitled to myself and others.

12 Q Yourself and others?

13 A Yes.

14 Q Anything you are entitled to?

15:56 15 A Yes.

16 Q All right. What is a fiduciary duty?

17 MS. HASSELMAN: Objection. Calls for a  
18 legal conclusion. Vague and ambiguous.

19 A I don't know.

20 BY MR. HANNAN:

21 Q Do you understand that you if appointed as  
22 a class representative would be undertaking a fiduciary  
23 duty?

24 A No, I don't know.

15:56 25 MS. HASSELMAN: Same objections to the

1 second question as to the original question of what is a  
2 fiduciary duty.

3 BY MR. HANNAN:

15:57 4 Q Now, do you expect to receive anything for  
5 your services as a class representative?

6 MS. HASSELMAN: Objection. Vague and  
7 ambiguous.

8 A I would say so, yes.

9 BY MR. HANNAN:

15:57 10 Q What is it you expect to receive?

11 A Whatever money that was paid into the plan,  
12 I expect to receive that back.

13 Q Anything else?

14 A No.

15:57 15 Q Now, do you understand that if your lawsuit  
16 is unsuccessful that you may be required to pay the  
17 costs -- the defense costs of the lawsuit?

18 MS. HASSELMAN: Objection. Calls for a  
19 legal conclusion.

15:57 20 A Yes.

21 BY MR. HANNAN:

22 Q And are you prepared to do that?

23 A No, not at this time, no.

24 MR. HANNAN: Now, in the course of  
15:58 25 questioning, on several occasions you have instructed



1 Q And you don't know because you have no  
2 facts to support that allegation; true?

3 MS. HASSELMAN: Objection. Calls for a  
4 legal conclusion and misstates prior testimony.

16:15 5 A Yes.

6 BY MR. HANNAN:

7 Q All right. And what facts, if any, do you  
8 state your allegation upon that you had no knowledge  
9 that more than fair market value had been paid due to  
16:16 10 potential asbestos liability until 2007?

11 MS. HASSELMAN: Objection. Asked and  
12 answered. Calls for a legal conclusion. Vague and  
13 ambiguous. We just -- you just asked her almost the  
14 exact same question.

16:16 15 A I don't know.

16 BY MR. HANNAN:

17 Q That's because you have no facts to support  
18 that particular assertion concerning potential liability  
19 until 2007; true?

16:16 20 MS. HASSELMAN: Objection. Vague and  
21 ambiguous. Misleading. Calls for a legal conclusion.

22 A Yes.

23 BY MR. HANNAN:

24 Q All right. And tell me each and every fact  
16:17 25 upon which you base your allegation upon information and

1 record. The time is 4:47 p.m.

2

3

4

EXAMINATION

16:47

5 BY MR. SULLIVAN:

6

7

8

9

Q Ms. Thomas, my name is Andrew Sullivan. I am an attorney for North Start Trust Company. I only have a few questions for you. I know it's been a long day.

16:47

10

11

Do you know who North Start Trust Company is?

12

13

14

A I am somewhat familiar with it, yes.

15

16

17

18

Q And can you describe your understanding of who they are?

16:47

15

16

A That North Star basically stepped in as a temporary like sort of a trustee for the ESOP plan.

17

18

19

20

21

22

23

24

25

Q And do you know when they stepped in as a trustee for the ESOP plan?

A No, I don't remember.

16:47

Q Did you know at one time and you just don't remember today or you weren't sure when they stepped in?

A I don't remember the exact date today.

Q Okay. What claims do you believe that you are asserting against North Star in the second amended complaint?

1 MS. HASSELMAN: Objection. Calls for a  
2 legal conclusion.

3 A Like I had stated earlier, that the plan  
4 paid too much.

16:48 5 BY MR. SULLIVAN:

6 Q And do you believe you have any other  
7 claims against North Star, whether they have been  
8 asserted or not?

9 A No.

16:48 10 MS. HASSELMAN: Objection. Vague and  
11 ambiguous and calls for a legal conclusion.

12 BY MR. SULLIVAN:

13 Q And do you think that you personally have  
14 sustained any losses because you weren't a participant  
16:48 15 back in 1998?

16 MS. HASSELMAN: Objection. Calls for a  
17 legal conclusion and vague and ambiguous.

18 A I don't know.

19 BY MR. SULLIVAN:

16:48 20 Q Do you think the subsequent valuations  
21 after the initial transaction were appropriate?

22 MS. HASSELMAN: Objection. Calls for a  
23 legal conclusion.

24 A I don't know.

16:49 25 BY MR. SULLIVAN:

1 Do you recall that you said earlier, you  
2 testified earlier that you were on a first name basis  
3 with Dan Stritmatter?

4 A It wasn't just myself. It was everyone in  
16:50 5 the company.

6 Q Were you friends with Mr. Stritmatter?

7 A No.

8 Q When you left Kelly-Moore in July of 2007,  
9 were you angry at the company?

16:51 10 A No, I was not.

11 Q And you mentioned earlier a conversation  
12 with Mr. DeVoe after the time that you left the company.  
13 Do you remember that discussion?

14 A Yes.

16:51 15 Q And I believe you were asked earlier -- I'm  
16 sorry. Let me rephrase that.

17 I believe you indicated earlier that  
18 Mr. DeVoe suggested that you could return to the company  
19 if you wished; is that correct?

16:51 20 A Yes.

21 Q And in that conversation did Mr. DeVoe give  
22 you the impression that if you did return that the  
23 circumstances would be any better than they had been  
24 before you left?

16:52 25 MR. HANNAN: Object as leading.

1 A No, he did not.

2 MS. HASSELMAN: I have one other thing,  
3 but I actually need to go off the record for just one  
4 second and just fix something in one of the documents.

16:52 5 THE VIDEOGRAPHER: Off the record at  
6 4:52 p.m.

7 (Recess 4:52 p.m.-4:53 p.m.)

8 THE VIDEOGRAPHER: We are back on the  
9 record at 4:53 p.m.

10

11

12 EXAMINATION (Continuing)

13 BY MS. HASSELMAN:

14 Q Ms. Thomas, I am going to ask you to take a  
16:53 15 look back at the exhibit that were introduced earlier  
16 that was 193. It should be in the little pile just in  
17 front of you. Do you remember discussing this document  
18 earlier today?

19 A Yes.

16:54 20 Q And do you recall that you said your best  
21 estimate of when you first saw this document was in  
22 approximately April of 2002?

23 A Yes.

24 Q And in April of 2002 when you believe you  
16:54 25 first saw this document, do you recall whether you read

# **EXHIBIT 4**

Daniel Feinberg – CA State Bar No. 135983  
 Todd F. Jackson – CA State Bar No. 202598  
 Margaret E. Hasselman – CA State Bar No. 228529  
 Nina R. Wasow – CA State Bar No. 242047  
 Kirsten G. Scott – CA State Bar No. 253464  
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*Attorneys for Plaintiffs and the Proposed Class*

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO AND OAKLAND DIVISION

THOMAS FERNANDEZ *et al.*,

Plaintiffs,

vs.

K-M INDUSTRIES HOLDING CO., INC.,  
*et al.*,

Defendants.

Case No. C-06-07339 CW

**PLAINTIFFS' INITIAL DISCLOSURES  
 FOR TOSHA THOMAS**

Pursuant to Federal Rule of Civil Procedure 26(a)(1), Plaintiffs provide the following  
 initial disclosures for Tosha Thomas. These disclosures are based on the information reasonably  
 available to Plaintiffs as of the date of service of these disclosures. Plaintiffs reserve the right to

1 supplement these disclosures at a later time.

## 2 DISCLOSURES

### 3 A. PERSONS LIKELY TO HAVE DISCOVERABLE INFORMATION RELEVANT 4 TO DISPUTED FACTS ALLEGED IN THE PLEADINGS.

5 The following persons are likely to have discoverable information relevant to disputed  
6 facts:

- 7 • Named Plaintiff Tosha Thomas, who may be contacted through Plaintiffs' counsel.
- 8 • Desiree B. Moore, trustee of the William E. Moore Marital Trust, reachable  
9 through counsel for KMH and the William E. Moore Marital Trust.
- 10 • Dan Stritmatter, Chief Financial Officer of K-M Industries Holding Co., Inc.  
11 ("KMH"), reachable through counsel for KMH.
- 12 • Peter M. Cazzolla, President and CEO of Capital Insurance Group ("CIG"),  
13 reachable through counsel for KMH.
- 14 • Herb Giffins, President and Chief Executive Officer of Kelly-Moore Paint Co.,  
15 reachable through counsel for KMH.
- 16 • Edward T. Mines, former Vice President and Chief Financial Officer of CIG,  
17 reachable through counsel for KMH.
- 18 • Stephen Ferrari, former Chief Financial Officer of Kelly-Moore Paint Co.,  
19 reachable through counsel for KMH.
- 20 • Joseph Cristiano, former President and Chief Executive Officer of Kelly-Moore  
21 Paint Co., reachable through counsel for KMH.
- 22 • Thomas H. Scherff, Vice President of Claims, CIG, reachable through counsel for  
23 KMH.
- 24 • Walter Leclerc, Director of Risk Management and Auditing, Kelly-Moore Paint  
25 Co., reachable through counsel for KMH.
- 26 • Other employees or former employees of KMH, CIG, and/or Kelly-Moore Paint  
27 Co. with knowledge of (a) the transactions in which the KMH ESOP or its  
28 predecessor plans, the CIG ESOP and the Kelly-Moore Paint Co. ESOP,  
purchased stock of KMH, and/or (b) administration of the ESOPs, and/or (c)  
communications with employees and/or participants about the ESOPs.
- Principals and Employees of Sansome Street Appraisers (names unknown), who  
prepared or assisted in preparing valuations of Kelly-Moore Paint Co. and KMH,  
255 California Street, Floor 10, San Francisco, CA 94111-4924; Tel: 415-362-  
5200.
- Principals and Employees of Ireland Associates, who prepared or assisted in  
preparing valuations of Kelly-Moore Paint Co. and KMH, 255 California Street,  
Floor 10, San Francisco, CA 94111-4924; Tel: 415-362-5200.



- 1 • Principals and Employees of Menke & Associates, Inc., who designed,  
2 implemented and administered the KMH ESOP or its predecessor plans, the CIG  
3 ESOP and the Kelly-Moore Paint Co. ESOP, 255 California Street, Floor 10, San  
4 Francisco, CA 94111-4924; Tel: 415-362-5200.
- 5 • John G. Hommel, Senior Vice President & Trust Officer, North Star ESOP &  
6 Fiduciary Services, North Star Trust Company, reachable through counsel for  
7 Defendant North Star Trust Company.
- 8 • Employees of Defendant North Star Trust Company (names unknown), 500 W.  
9 Madison Street, Suite 3630, Chicago, IL 60661; reachable through counsel for  
10 Defendant North Star Trust Company.
- 11 • Employees of BSI Consultants (names unknown), who are or were involved in  
12 administration of the KMH ESOP; 12121 Wilshire Blvd., Suite 555, Los Angeles,  
13 CA 90025; Tel: 310-207-8776, Fax: 310-207-3556.
- 14 • Employees of Brach, Neal, Daney & Spence, LLP (names unknown), who are or  
15 were involved in audits of the KMH ESOP; 333 West Santa Clara Street, Suite  
16 920, San Jose, CA 95113; Tel: 408-298-7676, Fax: 408-298-6324.
- 17 • Employees of Ernst & Young, LLP (names unknown) who are or were involved in  
18 audits of the KMH ESOP; 1331 North California Blvd., Suite 200, Walnut Creek,  
19 California 94596; Tel: 925-977-2900, Fax: 925-977-2994.
- 20 • Robert S. Socol, Managing Director, Stout Risius Ross, One South Wacker Drive,  
21 Suite 1900, Chicago, Illinois 60606; Tel: 312-857-9000, Fax: 312-857-9001.
- 22 • Andrew S. Ward, Director, Stout Risius Ross, One South Wacker Drive, Suite  
23 1900, Chicago, Illinois 60606; Tel: 312-857-9000, Fax: 312-857-9001.
- 24 • Scott D. Levine, Managing Director, Stout Risius Ross, 1600 Tyson's Boulevard,  
25 8th Floor, McLean, VA 22102; Tel: 703-637-3700, Fax: 866-808-7621.
- 26 • Other employees of Stout Risius Ross (names unknown) who are or were involved  
27 in performing valuations of KMH, CIG, or Kelly-Moore Paint Co. stock; One  
28 South Wacker Drive, Suite 1900, Chicago, Illinois 60606; Tel: 312-857-9000,  
Fax: 312-857-9001; and 1600 Tyson's Boulevard, 8th Floor, McLean, VA 22102;  
Tel: 703-637-3700, Fax: 866-808-7621.
- Any past or present "fiduciary," within the meaning of ERISA § 3(21), of the  
KMH ESOP or its predecessor plans, the CIG ESOP and the Kelly-Moore Paint  
Co. ESOP.
- Any past or present "party in interest," within the meaning of ERISA § 3(14), to  
the KMH ESOP or its predecessor plans, the CIG ESOP and the Kelly-Moore  
Paint Co. ESOP.
- Any person who, currently or in the past, has provided services to the KMH ESOP  
or its predecessor plans, the CIG ESOP and the Kelly-Moore Paint Co. ESOP.
- Any past or present "administrator," within the meaning of ERISA §3(16)(A), of  
the KMH ESOP or its predecessor plans, the CIG ESOP and the Kelly-Moore  
Paint Co. ESOP.

- Any individual listed in any defendant's initial disclosures.

**B. DOCUMENTS RELEVANT TO DISPUTED FACTS ALLEGED IN THE PLEADINGS.**

Plaintiffs have produced herewith unprivileged documents bates-stamped P1109 - 1133, which constitute correspondence and other documents received by Tosha Thomas relating to the above-listed plans.

Plaintiffs have also previously produced unprivileged documents bates-stamped P094 - 1108, which are documents produced in response to document requests made pursuant to ERISA § 104 prior to the institution of this lawsuit and in the possession of Plaintiffs. Plaintiffs have no additional documents to produce in response to this request at this time. However, Plaintiffs do not possess a complete set of all such documents. Because those documents no longer in Plaintiffs' possession are in the custody or control of one or more Defendants, they have been or will be produced by Defendants in initial disclosures or in response to a document request for such documents by Plaintiffs. Therefore, Plaintiffs may also rely on such documents. Plaintiffs may also rely on documents that have or may be produced by the Department of Labor pursuant to requests under the Freedom of Information Act, and any documents produced by Defendants in this lawsuit.

**C. COMPUTATION OF DAMAGES.**

Damages recovered in this litigation will flow to the K-M Industries Holding Co., Inc. Employee Stock Ownership Plan ("the ESOP"). The ESOP is entitled to recover an amount equal to (a) any and all gains by any fiduciary or party in interest as a result of the breaches of fiduciary duty and prohibited transactions alleged in the Complaint; (b) the difference between what the ESOP paid for stock in K-M Industries Holding Co., Inc. and the fair market value of that stock at the time of the transaction; (c) any losses suffered by the ESOP as a result of the breaches of fiduciary duty alleged in the Complaint; and/or (d) losses measured by any other method that the Court finds fair and equitable. These amounts will be proved at trial. Plaintiffs are also entitled to recover their attorneys' fees and costs of suit.

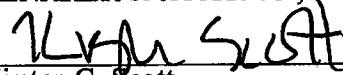
1 **D. INSURANCE AGREEMENTS.**

2 Plaintiffs do not know whether any Defendant carries insurance coverage for the conduct  
3 at issue in this case.

4 Dated: February 27, 2008

5 LEWIS, FEINBERG, LEE,  
6 RENAHER & JACKSON, P.C.

7 By:

8   
9 Kirsten G. Scott  
10 *Attorneys for Plaintiffs*  
11 *and the Proposed Class*  
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**PROOF OF SERVICE**

I, Candice Elder, declare:

My business address is 1330 Broadway, Suite 1800, Oakland, California 94612. I am over the age of 18 years and not a party to the above-entitled action.

On February 27, 2008, I served:

**PLAINTIFFS' INITIAL DISCLOSURES FOR TOSHA THOMAS**

on the persons listed below by placing a true and correct copy thereof in a United States Postal Service Mail Box, with First Class with postage prepaid, addressed as follows:

Ronald Lovitt  
J. Thomas Hannan  
Henry I. Bornstein  
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**Attorneys for Defendants**

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 27, 2008, at Oakland, California.

  
Candice Elder